

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA )  
v. ) 2:05cv1178-MHT  
HORACE MILTON BLACK )

## ORDER

Pursuant to the orders of this court, the United States has filed a response (Doc. 4) addressing the claims presented by the movant, Horace Milton Black, in his 28 U.S.C. § 2255 motion. In its response, the government argues that Black has failed to assert any claims that entitle him to relief. Specifically, the government argues that Black has not pleaded facts that, if true, are sufficient to establish that his counsel was ineffective for failing to file an appeal on his behalf. *See Strickland v. Washington*, 466 U.S. 668 (1984).

Accordingly, it is

ORDERED that on or before February 3, 2006, Black may file a reply to the response filed by the United States. Any documents or evidence filed after this date will not be considered by the court except upon a showing of exceptional circumstances. At any time after February 3, 2006, the court shall "determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the [court] shall make such disposition of the motion as justice dictates." Rule 8(a), *Rules Governing Section 2255 Proceedings in the United States District Courts*.

Black is instructed that when responding to the assertions contained in the

government's response, he may file sworn affidavits or other documents in support of his claims. Affidavits should set forth specific facts that demonstrate that Black is entitled to relief on the grounds presented in his § 2255 motion. If documents that have not previously been filed with the court are referred to in the affidavits, sworn or certified copies of those papers must be attached to the affidavits or served with them. When Black attacks the government's response by use of affidavits or other documents, the court will, at the appropriate time, consider whether to expand the record to include such materials. *See Rule 7, Rules Governing Section 2255 Proceedings in the United States District Courts.* Black is advised that upon expiration of the time for filing a response to this order, the court will proceed to consider the merits of the pending § 2255 motion pursuant to Rule 8(a).

Done this 13<sup>th</sup> day of January 13, 2006.

/s/ Delores R. Boyd  
DELORES R. BOYD  
UNITED STATES MAGISTRATE JUDGE